

In the Matter of License No. 236734 and all other Seaman Licenses
Issued to: RAYMOND T. EATON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1443

RAYMOND T. EATON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 16 September 1963, an Examiner of the United States Coast Guard suspended Appellant's seaman licenses for three months outright plus three months on twelve months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the United States MV N. W. GOKEY under authority of the license above described, on 11 July 1963, Appellant permitted his vessel to depart Guayanilla, Puerto Rico, for San Juan, Puerto Rico, with the applicable load line submerged approximately 16 inches in violation of 46 U.S. Code 88c.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

Appellant admitted that the vessel was overloaded but denied that this was done knowingly. However, the evidence is clear that Appellant did not use reasonable care to prevent the departure of the vessel while overloaded. Therefore, it was established that Appellant was negligent and this issue is not contested on appeal.

The grounds for appeal are that it was improper to suspend Appellant's license because 46 U.S. Code 88g(c) provides only for monetary penalties for violations of section 88c; it was error to suspend Appellant's license under 46 U.S. Code 239(g) since he was charged under 46 U.S. Code 88c; and it was error to deny counsel's motion to dismiss because Appellant was deprived of his property (livelihood) without due process of law when he was not advised at the investigation that he had a right to counsel and witnesses as provided by the regulations.

APPEARANCE FOR APPELLANT: Foley and Martin of New York City by
Thomas J. Irving, Esquire, of
Counsel.

OPINION

This action has been taken under 46 U.S. Code 239(g) which is the general authority for suspending or revoking seamen's licenses and other documents for incompetence, misconduct and negligence. Hence, Appellant's failure to comply with the requirements of 46 U.S. Code 88c is actionable under 46 U.S. Code 239(g), in order to promote the safety of life and property at sea, regardless of whether action is taken to impose the monetary penalties specifically provided for violations of 46 U.S. Code 88c. Consistent with this, a suspension or revocation of Appellant's license is the only action which the Examiner could take after having found Appellant guilty of negligence as alleged.

The right to be advised, at an investigation, concerning counsel and witnesses is contained in 46 CFR 136.07-7 which pertains only to investigations of marine casualties or accidents. The Investigation in this case was conducted under Part 137 (Suspension and Revocation Proceedings) of Title 46 of the Code of Federal Regulations rather than under Part 136. Furthermore, Appellant's cause could not have been prejudiced in this respect since the proof of the offense is based on measurements taken by an Investigating Officer, and Appellant has the right to be represented by counsel at the hearing and to produce witnesses in his behalf at the same time. Consequently, Appellant has not been deprived of his license without due process of law.

Concerning the propriety of the order imposed, it has been indicated previously that it is dangerous to navigate a ship with less than the required minimum freeboard which has been set by experts in order to provide for a sufficient amount of reserve buoyancy to insure the safety of the vessel under various conditions. Commandant's Appeal Decision No. 611. I think that the order is appropriate to the offense.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 16 September 1963, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 3rd day of February 1964.